THE INTERIM REPORT OF THE INDIAN JUSTICE REVIEW COMMITTEE

Prepared by:

Chairperson, Judge Patricia Linn and Representatives of the Federation of Saskatchewan Indian Nations, Government of Saskatchewan and Government of Canada

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INDIAN JUSTICE REVIEW COMMITTEE
INTERIM REPORT

1. INTRODUCTION:

The impact of the criminal justice system on aboriginal people has been the subject of numerous reports, studies and commissions across Canada over the past several years. Those studies have resulted in a multitude of recommendations, in large part directed at making our present system of justice more meaningful to aboriginal people and more sensitive to their unique position in our society.

It is the feeling of many people that the time has now come to put the written words into action and it is with this purpose in mind that the Saskatchewan Indian Justice Review Committee was established with a particular focus on the development of community-based initiatives.

We recognize that fundamental change does not always occur quickly or easily, and will not happen without meaningful dialogue among all parties involved. This committee is an important first step on the road toward real change in the criminal justice system in Saskatchewan as it relates to aboriginal people.

From June to early September, the committee travelled to several communities, including as far north as Pelican Narrows. We have consulted with the inmates at the Prince Albert Correctional Centres and the Penitentiary, and we have received many written and oral presentations from both individuals and organizations. This consultation process will be expanded over the next three months, September to early December, to include five public hearings throughout Saskatchewan. In addition, we will continue to receive submissions from all interested persons.

The purpose of this interim report is not to state conclusions or possible recommendations. Rather, its purpose is to inform the reader of the particular concerns that have been raised with the committee thus far and to encourage the dialogue that has begun to continue.

The words of Tom Sampson, Chairman, First Nations of South Island Tribal Council, spoken at the opening of the recent Yukon conference *Achieving Justice: Today and Tomorrow*, are appropriate:

> *"My people said to me last week, before I came here, Needsolesum...now that you have them turned around, take them through this walk and teach them what it is about as they will never understand unless we teach them. It is not in your law books. It is not in your universities. It is not in your colleges. It is in our community. That is where it is at."*

2. PROCESS REVIEW:

The formation of the Indian Justice Review Committee was jointly announced by the Federation of Saskatchewan Indian Nations (FSIN) and provincial and federal governments on June 5, 1991. The announcement followed months of consultations involving the FSIN and the governments of Canada and Saskatchewan. This process was endorsed by the All Chiefs meeting in the spring, 1991. In announcing the committee, the province suggested that it would make a major contribution to the ongoing task of building a criminal justice system which better accommodates the unique cultures, values, and traditions of the aboriginal people of this province. (The joint Press Release is attached as Appendix 1.)

The committee is chaired by Judge Patricia Linn of the Provincial Court of Saskatchewan, and consists of two representatives each from the FSIN, the Government of Canada and Saskatchewan Justice.

The committee has a six-month mandate (June 7, 1991 to December 7, 1991) to consult on the criminal justice system as it relates to Saskatchewan Indian people and communities; to consider recommendations relating to the delivery of criminal justice services and particularly practical, community-based initiatives; and to report such recommendations to the federal and provincial governments and the FSIN. The committee has a broad authority to look at issues of crime prevention, policing, the courts and corrections, but does not have authority to investigate specific cases or to look for solutions to problems with the criminal justice system outside the existing constitutional framework. (*See* attached Terms of Reference in Appendix 2.)

A starting point for the work of the committee was review of the 1985 joint studies, conducted by Justice Canada, Saskatchewan Justice and the FSIN on aspects of the justice system relating to Indians titled *Reflecting Indian Concerns and Values in the Justice System*. The committee reviewed this document at their meeting on June 14 and noted that activity had occurred on approximately 50 of the 56 recommendations contained in the report. (A summary of the report recommendations and assessment of activity to date is attached as Appendix 9.)

At the same time a parallel committee, the Metis Justice Review Committee was announced.

Phase I of this review has proceeded through: a series of committee meetings to set and discuss priorities, including joint meetings with the Metis Justice Review Committee; consultations with specific groups and organizations to receive their views and concerns; tours of existing justice services such as correctional and court facilities; review of various published materials; and a meeting with the Indian Justice Commission of the FSIN. (*See* Appendix 4 for a listing of activity through September 7 and Appendix 7 for a listing of literature considered.)

The Indian Justice Review Committee in Phase II will be involved in a series of public meetings across the province, along with more detailed review of existing materials and submissions, and will continue to consult with organizations and individuals with specific concerns about the operation of the criminal justice system in Saskatchewan as it relates to aboriginal people and communities. As well, further meetings with the Indian Justice Commission of the FSIN are planned. (*See* the schedule of future activity attached as Appendix 6.)

3. BACKGROUND CONCERNS:

In order to develop a perspective on the future delivery of criminal justice services in Saskatchewan to aboriginal people and communities, socio-demographic and constitutional realities beyond the criminal justice system were recognized by the committee as having a major impact on future system directions.

A. Socio-demographic Information:

Saskatchewan's total population is expected to restabilize at about 1 million by 1993.

Meanwhile our proportion of young population (0-19 years) will decrease 4.7% by 1996 (this is a continuing national trend). This is not a province-wide trend as some communities may experience an increase in the proportion of youth (Saskatoon, Lloydminster, Meadow Lake, and La Ronge and the North). It should be noted that Saskatchewan's annual birthrate, especially in the aboriginal community, is higher than the national average — 1.8 per 1,000 population for Saskatchewan, 2 per 1,000 aboriginal population and 1.4 per 1,000 population nationally.

The elderly portion of our population will grow 12.6% by 1996, and the elderly will represent 20% of the province's population by the year 2000 (the highest proportion of elderly nationally). The most significant growth will be felt in La Ronge and the North, Saskatoon, and Regina.

The trends to urbanization and rural depopulation are expected to continue both for reserve and non-reserve populations.

Currently the aboriginal population is projected at 8%-10% of the provincial population and the registered Indian population as a percentage of the total provincial population is predicted to continue to grow to 12% of the population by 2011, with the total aboriginal population representing 20% of provincial population.

Labour force statistics and employment information indicate that our marginal workforces are aboriginal, youth and women, with these factors having a cumulative negative effect.

While husband-wife with children families still constitute 40.9% of the household structure in Saskatchewan, this is an area of negative growth. Meanwhile, single parent, predominantly female-headed, families are increasing. The majority of such families have incomes under $15,000.

Socio-economic information on aboriginal and non-aboriginal populations in Saskatchewan continues to show that aboriginal populations, both on and off reserve, experience significantly lower standards of living and lower levels of educational attainment.

B. Information Limitations on Contact Between the Justice System and Aboriginal Peoples:

Information tracking aboriginal involvement with the criminal justice system is limited due to significant gaps in the information currently collected. A comprehensive review of the relationship between aboriginal people and the criminal justice system requires information on the full range of justice activities (policing, courts, prosecutions, corrections, and sentencing) and how aboriginal offenders are dealt with in comparison to non-aboriginal offenders. Current information collection mechanisms fall short of being able to provide this depth of information due to data limitations, particularly with regard to ethnic origin.

C. Saskatchewan Crime Trends:

- While Saskatchewan reported a 3.3% decrease in reported crime in 1990, over the past 10 years reported crime increased 3.8%, from 13,803 offences per 100,000 population in 1979 to 14,333 offences per 100,000 population in 1990.

- Over the past 10 years, the number and proportion of females and young offenders charged with an offence increased while the number of adult males charged has shown a decline.

- The incidence of violent offences has increased while the incidence of impaired driving, drug, and property offences has declined.

- Saskatchewan's population per police officer ratio is slightly higher than the national average at 526 per 100,000 in 1989 vs. 484 per 100,000 nation-wide.

- From corrections data for 1990-91, aboriginal (status Indian, Inuit, non-status Indian and Metis) participation rates are: 68% of all sentenced admissions to provincial jails; 56% of those on supervised probation; 41% of restitution caseload; 39% of community service orders; and 63% of fine option participants. (These are averages and actual rates vary by institution and geographic location.)

- From young offenders data, aboriginal youth participation rates for 1990/91 are: 72% of all custody admissions; 42% of community program participants (probation, community service orders and restitution); and 29% of alternative measures participants.

- This demonstrates that aboriginals form a larger proportion of the inmate and corrections population than their proportion of the general population. However, this indicates overrepresentation at the final stage of the criminal justice system process and does not shed light on the causes of this disparity, i.e., are there differences in offence patterns, charging or sentencing practices, etc.

- A recent study by the Canadian Centre for Justice Statistics of crime in Saskatchewan aboriginal communities in 1989 found that the proportion of offences reported on reserve (4.2%) was higher than the proportion of the population living on-reserve (2.7%), and that violent and traffic crime rates were higher than in other rural or urban areas. However, property crime was higher than the rural rate but lower than the urban rate.

- As well, the proportion of people within the young offender age category (12 to 17) is almost twice as high on reserve as off; conversely, persons aged 18 and over comprise a much higher proportion of the off-reserve population. These differences, however, are less pronounced in La Ronge and the rest of the North.

D. Self-Government and Constitutional Realities:

(1) Present Constitutional Authority:

The provisions of the *Constitution Act, 1982*, including the *Charter of Rights and Freedoms*, common law and constitutional practice, provide the framework for the Canadian criminal justice system.

The federal government has exclusive authority to enact criminal laws and procedures and does so through the provisions of acts such as the *Criminal Code*, the *Young Offenders Act*, the *Narcotic Control Act*, and the *Food and Drugs Act*, etc.

All legislation, both at the federal and provincial level, is subject to the *Canadian Charter of Rights and Freedoms*, enacted in 1982. As the fundamental law of the land, the Charter guarantees basic rights and freedoms which can only be infringed upon by such reasonable limits "as can be demonstrably justified in a free and democratic society".

At the federal level, two ministries are charged with justice responsibilities: the Solicitor General, which is responsible for policing/RCMP and penitentiaries and parole for offenders serving 2 years or more; and Justice, which assumes a primary role in the planning, development and implementation of criminal justice policy in relation to the *Criminal Code* and related legislation, for criminal drug prosecutions and other non-criminal code federal law prosecutions, and other general criminal policy areas such as federal cost-sharing to support Legal Aid, victims of crime, public legal education, etc.

Under the Constitution, the federal government is responsible for the appointment of superior court judges which in Saskatchewan means appointments to the Court of Queen's Bench and the Court of Appeal.

Finally, the federal government has exclusive authority to legislate in relation to Indians.

Under the Constitution, the province is responsible for the administration of justice (establishment and maintenance of the courts and appointment of provincial court judges, correctional services for offenders serving less than two years, young offender prosecutions under the *Criminal Code*, and policing services including the RCMP contract services). In addition, it passes quasi-criminal legislation governing matters such as traffic and liquor regulation. As well, the province cost-shares Legal Aid, victims programming and related justice services.

(2) THE STATED FSIN POSITION ON SELF-GOVERNMENT:

"The FSIN has always proclaimed that development and control of an Indian Justice System is a basic element of Indian self-government. Indian self-government is seen as an inherent right which has been further validated through the bilateral Treaty process carried out between Crown in right of Canada and the First Nations. The Treaties themselves speak to the First Nations' responsibility to maintain good order within our communities and to work with federal authorities in bringing criminals to justice. The federal Indian Act of 1876, and subsequent federal and provincial legislation, have replaced the First Nations' systems of self-government, including all aspects of the administration of justice, leadership selection, and law-making powers. The FSIN states that the right to self-government is maintained, even if it has not been exercised for 115 years. It is time for the re-development of First Nations self-government, including the administration of justice. The Canada Act of 1982 has Section 91(24), which says that the federal Crown has responsibility for "Indians and lands reserved for Indians". The federal government has interpreted this to mean that they have the power to make laws to govern the lives and resources of First Nations peoples, to the point that Section 88 of the Indian Act extends provincial law on to First Nations territory. Section 92(14) of the Canada Act gives the provincial governments authority over the administration of justice within their boundaries. They have extended this

authority, without First Nations consultation or permission, to the First Nations territory. Section 35 of the Canada Act protects existing aboriginal and Treaty rights which, in our mind, includes control of our justice system. Current parallel constitutional processes for aboriginal people and the Royal Commission on Aboriginal Affairs will consider ways and means of entrenching First Nations self-government, including First Nations-control of justice systems in our communities. The work that we do now is essential in order to give practical, legal effect to the constitutional entrenchment of First Nations self-government."

4. OVERARCHING CONCERNS REGARDING THE CRIMINAL JUSTICE SYSTEM:

A. Alienation:

The concern expressed in presentations to the Committee is that:

- For many aboriginal people the justice system in Saskatchewan is a foreign system imposed upon them by a foreign government which is not derived from any of their traditional ways of life. The people involved in the administration of justice in Saskatchewan, from the police through the courts to the prisons, are over-whelmingly non-aboriginal while the people on the receiving end of the justice system are aboriginal and far more over-represented than their numbers in society would merit.

- The *Criminal Code* and the law of procedure in the criminal courts is the adversarial system derived from Britain. The law applied to aboriginal people is not their own, and the fact that the laws are administered by persons of non-aboriginal descent only aggravates this unfortunate situation. By alienation, what is

meant is that the Indian and Metis people of the province feel that they are not a part of what they are subjected to when they find themselves in court charged with an offence. To them it is often another example of a whole series of injustices they are subjected to in the "white world".

- Sufficient recognition has not been given to the fact that aboriginal people had their own system of laws and processes to maintain order and harmony in their communities. When non-aboriginal settlers came they disregarded any system of justice that was in operation and instead a new European system was imposed. Because of this, there persists an "us" against "them" mentality in some segments of the population.

B. Racism:

(1) SYSTEMIC DISCRIMINATION:

Presentations to the committee have been made regarding the existence of "systemic and overt discrimination" related to aboriginal people and cultures in the practical provision of criminal justice services for aboriginal people.

As a working definition, the committee recognizes that "institutional or systemic discrimination" results when a system attempts to treat all people it encounters in a fair and impartial manner in the absence of the recognition that in doing so, the "system" may treat certain people in an unfair and prejudicial manner by failing to recognize their unique cultural heritage.

Though not specifically identified in our consultations, the committee recognizes the impact this form of discrimination can have in: the recruitment of aboriginal employees; the lack of aboriginal specific cultural training as opposed to broadly based cross-cultural awareness; and the effect of a "system" which fails to adequately recognize aboriginal culture in the provision of policing, court services and correctional programming.

In some presentations we heard concerns that:

- Police officers are measured by the quantity of their charges and as a consequence tend to target aboriginal communities rather than being measured by the quality of their services to the community they serve;

- Aboriginal people are not selected for jury duty and as a consequence aboriginal defendants are not provided with a jury of their peers;

- More aboriginal people are incarcerated for non-payment of fines than non-aboriginal people;

- Aboriginal people do not have the same access to mediation and diversion programs that non-aboriginal people do;

- Aboriginal candidates are not able to exercise their right to early parole hearings because they do not understand their defined rights, and that criteria for parole decision-making do not reflect the realities of aboriginal culture as it relates to the extended family, stable home environments and employment;

- Aboriginal spirituality is not recognized within correctional facilities and in parole decision-making with the same consideration given to non-aboriginal spiritual practices;

- Aboriginal culture was, and continues to be, displaced by an imposed system, i.e., residential schools and child welfare practices.

(2) OVERT DISCRIMINATION:

On a more disturbing note, the committee also heard of instances which may only be described as "overt discrimination". This form of discrimination appears to be motivated by individual, rather than institutional, acts of racism. In essence, the acts of individual service providers may be based upon racial bias and result in differential treatment of one culture over another. However, the committee has made no observations that would support a conclusion that the organizations which employ these individuals condone or endorse actions of this nature by their employees or agents.

In some presentations we heard concerns that:

- certain police officers are more inclined to stop and question a vehicle driven by an aboriginal person than they are to stop and question a non-aboriginal driver;

- some police officers and correctional workers are inclined to treat aboriginal people "rougher" than non-aboriginal people;

- some correctional officers address aboriginal inmates using racial slurs or comments which compare aboriginal people to non-aboriginal people in a derogatory manner. As well, we heard of, but failed to find, written racial slurs within guard posts in certain correctional facilities. The committee has been urged to recommend policy directives be developed to respond to these concerns;

- we have heard that some aboriginal employees in the criminal justice system are subjected to racial comments and put downs by co-workers focusing on their racial origin and/or allegations of a lack of skills and consequent employment only because of race;

- the LaChance/Nerland case has been referenced as an example of overt discrimination. These concerns were passed on from the committee chairperson to the Saskatchewan Minister of Justice as the committee's mandate does not extend to the review of specific cases.

C. Wholistic Approach to Community-Based Services:

An imperative theme re-emerging throughout the consultations and the literature reviewed by the committee is the emphasis placed by aboriginal people, communities and organizations on a wholistic approach to understanding and dealing with aboriginal people in conflict with the law. There is a desire to look at the physical, emotional, psychological, spiritual and material needs of offenders and victims as well as the need for relationships and connectedness to family and others. The goal is to deal with the total person within the context of their community.

Whether called the Sacred Circle, the Circle of Life, the Hoop of Life or the Medicine Wheel, this concept represents the symmetry and inter-connectness of life and the balance and harmony which is the ideal state for human life and for the world.

One presentation to the committee explained it as follows:

> *"When considered in relation to the Hoop of Life, all aspects of personal development are connected to each other.*

This means that struggle and growth in any area must be accompanied by a parallel struggle and growth in others." (The Circle Project)

D. Employment Equity:

The under-representation of aboriginal people in the delivery of justice services as staff or otherwise and the absence of adequate supports to assist aboriginal people employed in non-aboriginal institutions and programs were often voiced as concerns. Whether we are dealing with employment in the policing, courts, corrections or other spheres of the criminal justice system, employment equity is a concern. As a concept, employment equity calls for proportional representation of an identified group in the work force based on population.

E. Cross-cultural Training:

The committee is being urged to consider cross-cultural training as an important first step in understanding the history and aspirations of aboriginal people.

Cross-cultural training, we have been told, should be looked at as a process which will sensitize service providers to the differences and similarities of other cultures. More sensitive service delivery is conducive to building relations that promote a better understanding among aboriginal and non-aboriginal peoples.

The committee has heard that cross-cultural/race relations/sensitivity training must be mandatory and offered throughout the justice system. It must also be part of the orientation for people who will be working in culturally different communities and culturally diversified work forces. The training must receive the same degree of commitment as other law enforcement training programs.

The issue of where cross-cultural training should come from was raised at meetings. A suggestion was made that training should not come from within the same system the trainee is going to but, instead, from Metis and Indian educational institutions. Agencies requesting the training would then all receive the same training, lessening the disparities of knowledge of any particular issue pertinent to aboriginal people.

In this light, a concern was raised that police agencies, correctional colleges, the judiciary and other justice agencies currently dispense their own cross-cultural training courses. As these types of courses have been going on for years with questionable success, it was suggested that they may be too narrow in their focus.

F. Family Violence:

Several presenters raised a concern regarding family violence within aboriginal communities and involving aboriginal offenders and victims. Support was voiced for the development of crisis counselling and treatment services which would address the needs of victims (women, children and the elderly) and offenders.

G. Community Legal Education:

Another common concern expressed to the committee was the need for improved aboriginal access to information on the criminal justice system. While the materials and programs of the Public Legal Education Association of Saskatchewan were acknowledged as one avenue for obtaining information, the general lack of available information in aboriginal languages was noted.

Concern about access to information also encompasses the development of mechanisms to provide the community with information on the workings of the justice system, the law and how and when to access the system. Once again, language barriers were noted as impeding the ability of aboriginal individuals or communities to understand the legal system, including difficulties in following criminal court proceedings in the community.

H. Victims Services:

Interest in developing services to meet the needs of victims of crime was expressed, especially with regard to victims of violence such as spousal and sexual assault. It was noted that the province established a Victims Fund in 1989 and concerns were raised that more monies from that fund should be made available to provide services to assist victims to cope with the criminal investigation, criminal court process, etc.

I. Implementation Mechanisms:

Questions about the process or processes needed to further the work or recommendations of the committee have been raised. At present the committee envisions that some form of ongoing consultation process is needed to promote discussion of aboriginal justice issues and monitor the implementation of the committee's recommendations. This in turn raises the more fundamental question as to the level of interest or readiness of aboriginal communities to participate in or to accommodate change in the way that the criminal justice system interacts with aboriginal people.

5. SHARED PRIORITIES OF THE INDIAN JUSTICE AND METIS JUSTICE REVIEW COMMITTEES:

A. Youth Justice:

Youth justice was determined to be an important priority at the first joint meeting of the Indian and Metis Justice Review Committees. This perception was confirmed by subsequent presenters. Suggestions were made supporting:

- The creation of youth justice committees under section 69 of the *Young Offenders Act*. Such committees are operating in other jurisdictions such as Alberta (Fort Chipewyan), Manitoba and the Northwest Territories. They are also operating, informally, in one or two northern communities in Saskatchewan. Such committees could be composed of Elders and other respected members of the aboriginal community, and could serve a communication and liaison role between the youth court and the community, prepare pre-disposition reports and make recommendations to the judge on dispositions for aboriginal youth. Such recommendations would be sensitive to the community's culture and consider the needs of the particular youth. Using this model, the committee was advised that custodial dispositions and youth crime had decreased in Fort Chipewyan. However, the extent to which the program is responsible is unknown. We also understand that in future a Fort Chipewyan Elder will appear in youth court to read the disposition and that justice committees may be involved in adult sentencing as well.

- The recognition of Elders in their role as counsellors in both urban and rural communities and on-reserve. There is concern that aboriginal youth are not being taught about their traditional culture and are losing touch with their heritage.

- Elders sitting with a Provincial Court Judge to hear all youth court matters in Regina youth court. The structure of the court would change to a circle and family members would be encouraged to participate. Elders would have equal power in jurisdiction with the Provincial Court Judge.

- Wholistic treatment for youth. This included a presentation on development of an Indian controlled and operated open custody, treatment and healing Centre for Indian and Native youth in conflict with life through substance abuse. The treatment centre, to be called "Nitawkichikanis", would be located on the James Smith Reserve in a camp style setting. The treatment philosophy would be based extensively on Indian heritage and culture (healing).

- Greater aboriginal youth access to mediation, as currently such access seems to be more limited than for non-aboriginal youth. The John Howard Society indicated that about 20% of Saskatoon youth mediated by them in 1990-91 were aboriginal while about 1/3 of Regina participants were aboriginal. It appears that aboriginal youth are under-represented in the program. They suggested the program be expanded as follows:

    - mediation should be equally available for aboriginal and non-aboriginal youth who are first time offenders. They suggest that this may not always be happening due to factors such as negative perceptions about aboriginal family life, paper work concerns, and the perceived reluctance of victims to be involved in referrals. At this point the mediation program is not getting many aboriginal victims of crime;

- as Elders participate in the mediation program in Moose Jaw and Regina, consideration should be given to extending this throughout the province;

- cross-cultural sensitivity training is needed at the "shopkeeper" level and with the police to encourage better use of mediation for aboriginal youth;

- better education and awareness of mediation and diversion programs is required at the police college and ongoing. If necessary, changes should be made to simplify the mediation process and reduce the paper work to encourage police officers to use the program.

- Better programs to keep aboriginal youth in school including youth crime prevention initiatives. Elders should be invited to participate as resources in school programs. Cross-cultural training between aboriginal and non-aboriginal youth should begin in elementary school.

- Make aboriginal youth court advisers available to explain court proceedings to youth, interpret proceedings, refer youth to legal counsel and/or other community resources as needed, and contact family members for the youth.

- Employment equity to encourage the hiring of aboriginal persons in all areas of youth justice services.

- Additional young offender open custody facilities in appropriate geographic areas.

- A public inquiry into the lack of support services for aboriginal youth.

B. Urban Police:

The committee will be addressing the issue of policing for aboriginal people in detail in Phase II. However, it is important to note that the committee has heard and discussed certain elements of policing in Phase I. We have concluded that it is important to focus on urban policing issues, although it is not our intention to, nor will we, ignore the issue of policing for non-urban Indian people. In addressing the issue of Indian policing we will also consider the potential for, and ramifications of, alternatives which result as a consequence of the Indian Policing policy announced by the Federal Department of Indian Affairs on June 27, 1991.

In general terms the following issues have already been raised:

- the lack of aboriginal representation in major urban police agencies;
- the existence and quality of cross-cultural and race relations training for non-aboriginal police officers;
- the provision for and of aboriginal police officer training;
- the current means employed to receive advice and consultation from aboriginal communities respecting the provision of policing services for aboriginal people;
- the adequacy of complaint investigation mechanisms and police conduct given concerns regarding differential treatment of aboriginal persons;

- the potential for tripartite agreements between Federal, Provincial and Indian governments regarding RCMP contract services, including individual and regional band or tribal council policing as well as a larger Saskatchewan Indian police service.

C. Legal Representation:

(1) Native Courtworkers:

While support for the reinstatement of the Native Courtworker program has been voiced, it has also been suggested that such a program has too narrow a focus on the offender and the criminal courts. Some community liaison role has also been suggested.

Those complaining regarding the loss of the Native Courtworker Program expressed the opinion that the program was cut for political reasons rather than for any real concerns about the effectiveness of the program, and that without the Native Courtworker Program, Indian and Metis people were seriously disadvantaged in the criminal court system as they:

- lack any basic understanding about the legal process they find themselves involved in;
- do not understand what the judge, the prosecutor, or even their lawyers want from them;
- are not aware of their rights, particularly their right to counsel, and often do not know the process to retain a lawyer, Legal Aid or otherwise;
- do not understand the nature or seriousness of the offence, the probable consequence of pleading guilty, or the effect of the sentence they receive when they do plead guilty;

- do not have faith in the fundamental fairness of a system where the vast majority of the legal professionals involved are non-aboriginal.

We were also advised that there were some legitimate inadequacies in the program's operation in Saskatchewan in terms of inadequate training for native courtworkers and insufficient supervision of their activities in court. While recognizing these problems many people suggested the Native Courtworker Program was a much needed service which should not have been cancelled.

(2) LEGAL AID:

Concern was repeatedly expressed that Legal Aid is underfunded and that caseloads are excessive. However, criticism of Legal Aid went beyond this to include concerns about the cultural sensitivity of Legal Aid counsel, language barriers between aboriginal clients and counsel, and the appropriateness of legal advice or services provided to aboriginal clients.

Some specific complaints raised were:

- That Legal Aid lawyers were overloaded and unable to provide sufficient attention to their clients;

- That clients often did not have an opportunity to consult with a lawyer prior to their court appearance;

- That clients were unable to communicate with their lawyers;

- That lawyers did not sufficiently explain the court process that their clients were involved in;

- That lawyers were not seriously interested in defending their clients but rather in processing them the fastest way possible;

- That Legal Aid lawyers are seen to be part of the non-aboriginal legal system and, as such, in collusion with the Crown;

- That because of the lack of faith many Indian and Metis people have in the services provided by Legal Aid, they often plead guilty to a charge and deal with it on their own;

- Particularly in the northern communities, concern was raised regarding the practice of Legal Aid lawyers flying in and out on the court plane with the Judge and Prosecutor, and the processing of cases too quickly.

(3) OTHER:

Options suggested include the use of paralegals in the aboriginal community, cross-cultural training for Legal Aid staff, increased resources for Legal Aid and/or the establishment of aboriginal-specific advocacy services.

A proposal for the establishment of a Native Counselling Service was brought forward in one community. This concept would promote the creation of a community liaison worker to act as an intermediary between the criminal justice system and community Elders and youth, and perhaps expand on the role previously carried out by Native Courtworkers.

D. Sentencing Alternatives:

Several presenters expressed support for the development of mediation/diversion/reconciliation programs to involve the offender, the victim and community representatives in a more traditional approach to re-establishing harmony in the community. This approach could involve Elders, Band Councillors, community leaders or community-based services. Such an approach was suggested for

minor offences and certain disputes involving family or neighbours. As well, it was suggested that feuds were the basis of offending patterns in some communities, and that in such situations the reconciliation needed is for the community as a whole, not just the offender and the victim.

One example of this type of program presented to the committee was the Interlake Reserves Tribal Council proposal for a Native Harmony and Restoration Centre. Such an approach provides a comprehensive rehabilitational environment for offenders and services for victims based on culturally consistent aboriginal justice traditions. This proposal takes a wholistic approach to resolving a dispute. It seeks to nurture healthy family life and self-esteem, redress harm to the victim, provide training and counselling, and reintegrate offenders back into the community.

Other areas of potential expansion of sentencing options raised with the committee include increased use of suspended sentences, longer probation orders to allow treatment of sex offenders, use of day fines (fines geared to the income level of the offender), standardization of default or community service time in lieu of fine payment, installment payment of fines, and increased availability of electronic monitoring.

The use of sentencing panels composed of local residents or Elders to provide community input into the appropriate sentence was also promoted for both youth and adult offenders.

The committee recognizes that sentencing changes can only be effective where they are understood and accepted by the judiciary and the public.

E. Court Services:

(1) General Concerns:

The committee heard from several presenters that there are numerous impediments to aboriginal people who are involved with the court system. Some examples cited are:

- the need for formal interpreter services with properly trained interpreters;

- the need for adequate services to ensure that aboriginal persons can understand the court process and are able to respond in a knowledgeable fashion;

- the need for resources and materials to facilitate community victim and witness involvement in and understanding of all aspects of the judicial process. This could include development of a glossary of aboriginal words to interpret criminal law language;

- the need to use Indian or aboriginal justices of the peace including cross-appointed justices to handle criminal law, *Indian Act* and Indian Band by-law offences. The committee has been made aware of a variety of models of justice of the peace programs and will be reviewing this issue further. The following models were noted:

  (a) in Kahnawake there are two section 107 *Indian Act* justices of the peace;

  (b) in the Northwest Territories, the justice of the peace court is considered one of three levels of court, with the justices exercising various levels of authority from swearing informations through to conducting trials on summary conviction matters;

(c) in Thunder Bay justices conduct trials on provincial and band by-law offences.

- there is a need to determine the type of services to be delivered by justices of the peace in a given community, e.g., charging, disposition, remands etc. as it is imperative to find out what the community wants;

- there is a need to review the flexibility and scope of current legislative and operational practices to deal adequately with community desires for the delivery and availability of justice of the peace services;

- irrespective of the model used, it was emphasized that justices need to be appropriately trained;

- the provision of adequate court facilities in rural and northern areas was raised. This includes a lack of privacy for interviews, inadequate washroom facilities, distractions in the court locations (hot dog stands just outside the courtroom), problems in acoustics etc.

- the present swearing in processes may not be culturally relevant to some people and the option of being sworn in by native custom such as sweetgrass ceremonies, pipe ceremonies or use of an eagle feather, etc. should be recognized.

(2) NORTHERN CONCERNS:

The committee travelled to the La Ronge area to hear concerns specific to the administration of justice in the North. There are two resident provincial court judges in La Ronge who cover the northern Provincial Court circuit with sittings held at Beauval, Buffalo Narrows, Creighton, Cumberland House, Fond du Lac, Ile la Crosse, La Loche, Pelican

Narrows, Pinehouse, Sandy Bay, Southend, Stony Rapids and Wollaston Lake. Almost all of the people appearing in these places are aboriginal, primarily Cree or Dene. The alienation concerns previously identified are amplified in the North. Judge Claude Fafard in his brief to us stated that:

> *"A system of law which is perceived by a large segment of the population to be unfair will not engender respect, and without respect there is no credibility. In the north, the administration of justice suffers from a lack of credibility with a large proportion of the native people."*

Other concerns raised included:

- transportation for accused persons and witnesses from their residence to court is often non-existent, resulting in trials being adjourned and inefficient use of court time. It is not unusual for an accused person to wait many months for trial as a result of several adjournments. This problem seems to have been alleviated in Southend where an aboriginal woman employed by the Lac La Ronge Band travels to Southend and other points to pick up persons and transport them to and from court. She also provides counselling and interpretation services. This service appears to result in considerably less delay in court process. We are advised by the judges in the North that such a system would work well in other locations;

- the atmosphere in Northern courts is one of rushed interviews and quick plea bargaining in order to get through the docket before it is too dark for the plane to fly and the judge and lawyers to get back to La Ronge;

- presently the Northern court backlog is dealt with by relief teams, with a judge, clerk, prosecutor and Legal Aid lawyer being brought up from the South for a week to attend special sittings. Unlike the resident Northern judges and Legal Aid lawyers, they have little understanding of or sensitivity to the cultures, customs or problems of the Northern communities they are sent to;

- the Court of Queen's Bench has no sittings north of Prince Albert and Melfort, even though there are appropriate facilities in La Ronge. As a result, the election process (the ability to choose what court you want to be tried by) has little meaning because of the cost involved in travelling to Prince Albert or Melfort. Most accused persons simply elect Provincial Court for all offences in the North;

- access to private legal counsel (as opposed to Legal Aid) is very limited due to the added cost of bringing a lawyer to the accused person's northern community;

- the role of the RCMP as prosecutor was questioned as the same officer can be the investigator, the person who lays the charge, the plea bargainer and the person recommending the sentence;

- the RCMP require accused persons in custody to call collect when exercising their right to private counsel; however, Legal Aid accepts collect calls and has a toll free number;

- there is virtually no access to bail reports for show cause hearings given the inadequate resources for probation services — adult and youth;

- family violence is widespread in the north with very limited access to rehabilitation or counselling services for either the offender or the victim;

- La Ronge Legal Aid lawyers, although sensitive to northern issues, are critically under-resourced, and thus unable to always provide the legal services required;

- positive changes could include:

  a) a pre-charge alternate dispute resolution mechanism;

  b) aboriginal justice sentencing committees;

  c) aboriginal justice of the peace courts to hear summary conviction offences;

  d) improved monitoring of the fine option and community service order programs;

  e) properly trained interpreters being available to the courts; and

  f) more paralegals and/or Legal Aid lawyers;

F. Corrections:

(1) Introduction:

As one of the components of the criminal justice system, Corrections is located, chronologically, near the end of the criminal justice service spectrum. Inmates will already have been affected by policing services; the prosecutorial system; the defense system (Legal Aid in the main); and the court system before receiving correctional services. The fact, however, that offenders receiving prison sentences are easily identifiable in large groups dramatically portrays the fact that approximately 68 percent of

those incarcerated provincially are aboriginal. Correctional services in Saskatchewan, both federal and provincial, consume approximately one-third of the $250 million per year criminal justice expenditure.

As previously noted and despite cross-cultural training, there is concern about pockets of racism in some correctional centres.

(2) CORRECTIONS PRESENTATIONS:

While the Committee's work in the Corrections area is not yet complete, it has had the opportunity to tour correctional facilities in Prince Albert, namely the Pine Grove Correctional Centre (female), the Provincial Correctional Centre for Men, the Provincial Community-Training Residence and the Saskatchewan Penitentiary. The Committee also received a submission from the Community Operations staff (Probation, Fine Option, Restitution, etc.) from Prince Albert.

(3) ISSUES RAISED IN PRESENTATIONS TO THE COMMITTEE:

(a) <u>Female Offender Issues</u>:

- special efforts should be made to have a long-term, consistent educational/vocational/ upgrading program available in the Pine Grove Correctional Centre for women;

- an advocacy group specifically for aboriginal women in prison and leaving prison should be established and funded;

- the practice of sending aboriginal women to Kingston Penitentiary should stop immediately, with the Federal and Provincial Governments entering into agreement to house these women until such time as a desirable alternative is found. The present practice of housing federally sentenced women in the Saskatchewan Penitentiary should stop immediately until alternative means of incarceration can be found;

- the adequacy and availability of, and resources for, treatment and other programs for female offenders should be reviewed and appropriate action taken and, as well, any such programs should be culturally sensitive;

- the province should look into revising its policy with respect to the number of days required before inmates at Pine Grove are eligible for the family visiting unit.

(b) <u>Employment Equity Issues</u>:

- Given the high ratio of aboriginal offenders served by Federal and Provincial Corrections, a higher percentage of staff ought to be aboriginal. However, the Committee was told that Saskatchewan Corrections has in place an aboriginal recruitment strategy and has approximately ten percent aboriginal staff at present.

- A support network for aboriginal staff is required to assist in coping with their minority status.

- Specific training may be required for new recruits to fill in gaps in knowledge and skills.

- Aboriginal staff should not be barred from recruitment or promotion because of academic requirements.

- Non-aboriginal staff require more effective cross-cultural training to ensure their ability to understand and work positively with aboriginal colleagues and offenders.

- Advertising needs to be specifically targeted to aboriginal candidates to ensure their awareness of employment opportunities.

(c) Aboriginal Delivered Services Issues:

- While Provincial Corrections is heading in the right direction in the involvement of aboriginals in service delivery (Gabriel Dumont female offender half-way house, contracts for the operation of the Fine Option Program, cross-cultural training, aboriginal spirituality, etc.), much more needs to be done.

(d) Increased Recognition of Elders Issues:

- Elders to be invited to participate in all program areas;

- Remuneration to Elders to compensate them for their service;

- Elders should receive the same status as other religious leaders coming into correctional facilities;

- Elders could be invited to teach non-aboriginal staff about aboriginal culture. A process involving both the MSS and FSIN is required to identify community Elders who are both willing and effective in working with offenders.

(e) Diversion/Mediation Issues:

- The Committee was repeatedly told that diversion and mediation fit well with traditional aboriginal customs. It was recommended that diversion occur at the earliest possible point in the system rather than at the court appearance stage.

(f) Healing Centre for Male and Female Offenders Issues:

- The Committee was frequently told of the futility of punishment as a mechanism to change behaviour. Instead, it was suggested that a more effective means of dealing with aboriginal offenders was a wholistic approach which focused on the establishment of a healthy, positive self-concept (healing).

- It was proposed that the Farm Annex Program at the Saskatchewan Penitentiary could be contracted to an aboriginal group to operate as a federal healing lodge for men.

- There was strong support voiced for the location of a federal aboriginal healing lodge for women in Saskatchewan.

(g) Pre-Release Assistance Issues:

- The need for more pre-release assistance was identified in all correctional facilities. Saskatchewan Penitentiary utilizes three Native Liaison Officers (employed by the Prince Albert Indian and Metis Friendship Centre and operating under contract to the Saskatchewan Penitentiary) and the requirement for more was identified. The

Liaison Officers assist inmates in developing release plans and act as a communication link between inmates and outside individuals and organizations. No such specialized positions exist in Provincial Corrections.

(h) Programming Issues:

The need for an increase in the volume and effectiveness of programming in all correctional facilities was identified. Specific priorities were:

- Increased programming for batterers;
- Increased programming to improve parenting skills;
- Vocational programs need to be accredited with outside agencies so that time spent on a trade in prison would count towards accreditation towards a Journeyman's Certificate;
- Penitentiary inmates expressed concern that Grade 12 and University classes may no longer be available to them because of fiscal considerations. That fear extended to a concern that the federal responsibility for Treaty Indian education may not be honoured;
- There was a concern that aboriginal sensitive programming and aboriginal studies programming was lacking.

(i) **Access to Parole Issues:**

- Penitentiary inmates expressed the view that aboriginal inmates were less likely to get parole than non-aboriginal inmates. They also expressed a concern that aboriginal inmates were held in prison beyond the normal release date (Gated) because they were serving a sentence for a violent crime.

- The complaint was made that participation in aboriginal spiritual programs did not get the same weight as more conventional programs when being considered for parole.

- There should be more aboriginal members on the Parole Board.

(j) **Treaty Rights Recognition Issues:**

- Concern was expressed that Treaty Indians were not given the dental and eye care services to which they were entitled under Treaty. They also expressed concern that they were required to pay Provincial Sales Tax on canteen items.

(k) **Medical/Psychological Services Issues:**

- The need for increased medical, psychological and psychiatric services was identified at the Pine Grove Correctional Centre. The complaint was made that inmates are not able to gain access to a psychologist or a psychiatrist speedily enough to deal with immediate problems. Inmates wish to have increased access to professionally-based counselling services.

- Penitentiary inmates stated that the psychological testing done within the Penitentiary system is not culturally relevant and, therefore, may reduce their opportunities for parole or other programs of reduced custody.

(l) **Post Release Issues:**

- It was a widely held view that there is insufficient assistance and support for inmates upon release. Ongoing assistance is required in the areas of personal counselling, housing, employment, addictions, etc.

G. FSIN Policy Statement on Justice Services:

"The development of police services on-reserve is a very high priority. The Indian Justice Commission will research the viability of a centralized police service with Tribal Council and First Nation input. This may require a First Nations Police Commission, a First Nation Police Services Act, and the creative use of training facilities and programs. The development of police services off-reserve centers around recruitment of Indian people to serve in urban police services. As well, major efforts will be made to set up senior level liaison positions between the police and the Indian community. Cross-cultural education is also being discussed with the Chiefs of Police and the various Police Commissions. The development of an Indian Court system has as its model the American Indian Tribal Court System. This will require various First Nations legislative developments, human resource development to staff our courts, and the further definition of our courts' jurisdiction and the manner in which they will operate. In the interim, the FSIN is

researching the feasibility of having provincial court sittings, staffed and coordinated by Indian people, on-reserve. This includes the use of Indian Justices of the Peace and Elders Advisory Councils. The FSIN firmly supports the development of a Community Justice Advocate program, under the control of Tribal Councils, which will provide advisory services to individuals in conflict with the law but which will also provide a focus for creative models for community-based justice systems. This will be an expanded model of the former Courtworker Program. The FSIN will continue to press for an independent, standing Judicial Commission of Inquiry which will be charged with investigating incidents of abuse in the judicial system (policing services, courts, and corrections), whether it be under the present system or a system controlled by First Nations."

APPENDIX 1
FSIN-MSS-SASKATCHEWAN-CANADA
JOINT PRESS RELEASE

Canada

Saskatchewan

-91-334

IMMEDIATE RELEASE
June 5, 1991

News Release/Communiqué

ABORIGINAL JUSTICE REVIEW COMMITTEES ESTABLISHED

How the criminal justice system of Saskatchewan deals with aboriginal people will be examined by two committees created by special agreements between the province's aboriginal organizations and the governments of Saskatchewan and Canada.

The review committees were announced today by Justice Minister Gary Lane; Vikas Khaladkar, legal counsel for the Federation of Saskatchewan Indian Nations (FSIN); Noble Shanks of the Metis Society of Saskatchewan; and federal Justice Minister Kim Campbell.

"The Saskatchewan Metis Justice Review Committee and the Saskatchewan Indian Justice Review Committee will examine and recommend changes to make the criminal justice system more responsive to the needs and concerns of Saskatchewan Indians and the Metis of this province," Lane said.

"The committees will have broad mandates extending to crime prevention, policing, the courts and corrections."

Both committees will be chaired by Judge Pat Linn of the Provincial Court of Saskatchewan. Each committee will prepare a report to be presented by December, 1991. The report regarding Indian people will be presented to the federal and provincial governments and the FSIN, and the report regarding the Metis will be presented to the Metis Society of Saskatchewan and the federal and provincial governments.

"We have established the two committees to ensure that the varying circumstances of Saskatchewan Indians and the Metis are properly accommodated by the review process," Lane said. "The committees will focus on practical, community-based initiatives which will meet real needs."

Isabelle Impey and Noble Shanks will represent the Metis Society of Saskatchewan on the Metis Justice Review Committee. Dan Bellegarde and Blaine Favel will represent the FSIN on the Indian Justice Review Committee. Government representatives on both committees are: Terry Thompson and Betty Ann Pottruff of Saskatchewan Justice; Susan Mak of Justice Canada; and Allan Phibbs of the federal ministry of the Solicitor General.

Funding for the review committee is being provided by the Law Foundation of Saskatchewan, Saskatchewan Justice, Justice Canada and the federal ministry of the Solicitor General. The terms of reference for both committees permit consultation with, or receiving presentations from, interested groups or individuals at the discretion of the chair.

The Indian Justice Review Committee will also examine the findings of a 1985 FSIN-federal-provincial study into the relationship between Indian people and the justice system.

"It is the hope of all parties that both the Indian Justice Review Committee and the Metis Justice Review Committee will make major contributions to the ongoing task of building a criminal justice system which better accommodates the unique culture, values and traditions of both the Metis and Indian people of this province," Lane said.

For further information, contact:

Judge Patricia Linn
Provincial Court
of Saskatchewan
Saskatoon
Phone: 933-6682

Brian Barrington-Foote
Deputy Minister
Saskatchewan Justice
Regina
Phone: 787-5352

Noble Shanks
Metis Society of Saskatchewan
Saskatoon
Phone: 343-8285

Vikas Khaladkar
Federation of Saskatchewan
Indian Nations
Regina
Phone: 721-2822

Dan Prefontaine
Assistant Deputy Minister
Justice Canada
Ottawa
Phone: (613) 957-4701

APPENDIX 2
INDIAN JUSTICE REVIEW COMMITTEE
TERMS OF REFERENCE

The Saskatchewan Department of Justice, the Government of Canada and the Federation of Saskatchewan Indian Nations agree to establish a Saskatchewan Indian Justice Review Committee for the period from June 7, 1991 to December 7, 1991.

1. Objectives

The objectives of the Committee are:
— to facilitate consultation on the criminal justice system as it relates to Saskatchewan Indian people and communities;
— to consider recommendations relating to the delivery of criminal justice services to Saskatchewan Indian people and communities, and more particularly, relating to the development and operation of practical, community-based initiatives intended to enhance such services;
— to report such recommendations to the Federal and Provincial governments and to the Federation of Saskatchewan Indian Nations.

2. Scope

The Committee may conduct consultations and make and report recommendations in relation to any part of the criminal justice system, including but not restricted to crime prevention, policing, the courts and corrections.

3. Membership

The Committee shall have the following members:
— two members appointed by the Federation of Saskatchewan Indian Nations;
— two members appointed by Saskatchewan Justice;
— two members appointed by the Government of Canada;
— a Chairperson to be chosen by agreement of all members of the Committee.

4. Workplan

(a) The Chairperson shall call meetings of the Committee on a regular basis, and more particularly, shall make best efforts to ensure that meetings are held at leat twice in each month;

(b) The Chairperson shall set the time, place and agenda for meetings of the Committee following consultation with Committee members;

(c) The initial agenda of the Committee shall include the following items:
— to share information on Indian Justice issues and programs in Saskatchewan;
— to review the 1985 FSIN-Saskatchewan Justice-Justice Canada joint study, *Reflecting Indian Concerns and Values in the Justice System*, to consider whether the initiatives described therein have been implemented or should be recommended, whether as pilot projects or otherwise; and
— to develop a workplan which priorizes the policy and program areas to be considered by the Committee.

(d) The Committee may, at the discretion of the Chairperson, consult with or receive representations from any person, group or organization whose participation is considered necessary or desireable to advance the work of the Committee.

(e) The Committee shall report its activities, findings and recommendations to Saskatchewan Justice, the Government of Canada and the Federation of Saskatchewan Indian Nations, as follows:

(i) an interim report, including future plans, by September 7, 1991;
(ii) a draft final report by November 7, 1991;
(iii) a final report by December 7, 1991;
(iv) from time to time at the discretion of the Chairperson.

APPENDIX 3

NOTICES OF REQUEST FOR WRITTEN SUBMISSIONS TO THE INDIAN AND METIS JUSTICE REVIEW COMMITTEES

Notices requesting written submissions (attached) were published in the following publications in late June/early July:

Northwest Eagle (Meadow Lake Tribal Council), June 1991

Estevan Mercury, June 26, 1991
Goldbelt Gazette (Creighton), June 26, 1991
La Ronge Northerner, June 26, 1991
Lloydminster Times, June 26, 1991
Melville Advance, June 26, 1991
North Battleford News Optomist, June 26, 1991
Swift Current Sun, June 26, 1991
Weyburn Review, June 26, 1991
Yorkton This Week, June 26, 1991

Moose Jaw Times Herald, June 29, 1991
Prince Albert Daily Herald, June 29, 1991
Regina Leader Post, June 29, 1991
Saskatoon Star-Phoenix, June 29, 1991

Melfort Journal, July 2, 1991

Windspeaker, 9:8, July 5, 1991

New Breed Magazine, 22:7, July/August 1991
Saskatchewan Indian, 20:3, Summer 1991
Saskatoon's Native Citizen, July 1991

NOTICE
Request for Written Submissions

On June 5, 1991, the Saskatchewan Indian Justice Review Committee and the Saskatchewan Metis Justice Review Committee were established to examine how the criminal justice system deals with Saskatchewan aboriginal people. These two committees were created by special agreements between the Federation of Saskatchewan Indian Nations, the Metis Society of Saskatchewan, and the governments of Saskatchewan and Canada. Judge Patricia Linn has been appointed chairperson of each committee.

The committees have broad mandates, extending to crime prevention, policing, the courts and corrections. Their shared objectives are:

- to facilitate consultation on the criminal justice system as it relates to Saskatchewan Indian and Metis people and communities — reserve and urban, northern and southern;
- to consider recommendations relating to the delivery of criminal justice services to Saskatchewan Indian and Metis people and communities, and more particularly, relating to the development and operation of practical, community-based initiatives intended to enhance such services;
- to report such recommendations to the Federal and Provincial governments and to the Metis Society of Saskatchewan and the Federation of Saskatchewan Indian Nations respectively by December 1991.

The chairperson, Judge Patricia Linn, invites any interested person or group to submit written comments concerning matters within the Committees' mandates. Submissions should be received before September 1, 1991 addressed as follows:

Judge Patricia Linn, Chairperson
Saskatchewan Indian Justice Review Committee
Saskatchewan Metis Justice Review Committee
Box 3177, 1874 Scarth Street
Regina, Saskatchewan, S4P 3G7

APPENDIX 4

INDIAN JUSTICE REVIEW COMMITTEE (IJRC) ACTIVITIES

JUNE 5, 1991 TO SEPTEMBER 7, 1991

June 5, 1991

IJRC formally announced by Federation of Saskatchewan Indian Nations (FSIN) and the Governments of Canada and Saskatchewan, **Regina**.

June 7, 1991

Joint-meeting with Metis Justice Review Committee (MJRC) to establish common priorities, process and schedule, **Saskatoon**.

June 14, 1991

Committee meeting to establish Indian-specific priorities and review progress on *Reflecting Indian Concerns and Values in the Justice System*, **Regina**.

July 5, 1991

Meeting with FSIN Indian Justice Commission on justice concerns, **Saskatoon**.

July 11, 1991

Visit to the Pine Grove Correctional Centre for Women and meeting with the administration and Inmates' Committee. Meeting with Prince Albert Community Corrections. Visit to the Prince Albert Men's Provincial Correctional Centre and meeting with various inmates and citizens'/community groups to receive oral presentations. Visit the Prince Albert Community Training Residence. Receive oral presentation on a proposal for a reserve-based substance abuse treatment program for Indian youth on the James Smith Reserve, **Prince Albert**.

July 12, 1991

Visit to the Prince Albert Penitentiary for meetings with: the administration; the spiritual advisor and native liaison officers; and the Inmates' Welfare Committee and the Native Awareness Group, **Prince Albert**.

July 22, 1991

Oral presentation by the Key Band on on-reserve, minimum security correctional facility, **Regina**.

July 23, 1991

Meeting with officials from the Young Offenders Division, Saskatchewan Social Services, and a member of the Regina Youth Court to receive oral presentations. Visit to the Circle Project and meeting with representatives of the project, the John Howard Society and the Saskatchewan Coalition Against Racism to receive oral presentations, **Regina**.

August 11, 1991

Meeting to receive oral presentations from the North Central Regional Council of the Metis Society of Saskatchewan, a La Ronge member of the Provincial Court, a member of the private bar and community members, **La Ronge**.

August 12, 1991

Observe the Provincial Court in operation, **Pelican Narrows**.

August 26/27, 1991

Committee meeting on interim report, **Saskatoon**.

September 3-8, 1991

Attend National Aboriginal Justice Conference, **Whitehorse, Yukon**.

APPENDIX 5

LIST OF SUBMISSIONS RECEIVED AND INDIVIDUALS/GROUPS CONSULTED, THE INDIAN JUSTICE REVIEW COMMITTEE

1. Annette Neustaedter, Director, Pine Grove Correctional Centre for Women
2. Inmate Committee, Pine Grove Correctional Centre for Women
3. George Clark, Regional Manager, Prince Albert Community Corrections
4. Dave Simpson, Director, Prince Albert Mens Provincial Correctional Centre (PACC)
5. Inmate Committee, Prince Albert Mens Provincial Correctional Centre (PACC)
6. Bernice Sayese, Prince Albert Indian and Metis Friendship Centre
7. Native Fellowship, PACC
8. Michelle Schrmil, Community Volunteer, PACC
9. Andre Letendre, Wicihitowin (Helping One Another)
10. The Literacy Program, PACC
11. The Recovery Program, PACC
12. Mark Hill
13. Jim Vickaryous, Director, Prince Albert Community Training Residence
14. Angus McLean, James Smith Band*
15. Jim O'Sullivan, Warden, Prince Albert Penitentiary
16. Harvey Delorme, Spiritual Advisor, PA Pen

17. Eugene Stevens, "F" Block Unit Manager, PA Pen
18. Inmate Welfare Committee, PA Pen
19. Native Awareness Group, PA Pen
20. Young Offenders Division, Saskatchewan Social Services
21. Judge Linton Smith, Provincial Court of Saskatchewan*
22. The Circle Project Association Inc.
23. John Howard Society of Saskatchewan
24. The Saskatchewan Coalition Against Racism
25. The Key Band
26. The Yorkton Tribal Council
27. The Indian Justice Commission, Federation of Saskatchewan Indian Nations
28. Judge Ross Moxley, Provincial Court of Saskatchewan*
29. Judge Claude Fafard, Provincial Court of Saskatchewan*
30. Paul Laliberte
31. Gerry M. Morin
32. North Central Regional Council, Metis Society of Saskatchewan
33. Wesley Wuttunee
34. Wayne Stonechild

35. "F" Division, Royal Canadian Mounted Police

36. Saskatchewan Police Commission

37. Prairie Region, Correctional Service Canada

38. Prairie Region, National Parole Board

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* for affiliation purposes only. In addition, the chairperson addressed the Justices of the Saskatchewan Court of Queen's Bench, August 29, 1991, Madge Lake.

APPENDIX 6

INDIAN AND METIS JUSTICE REVIEW COMMITTEES FUTURE MEETING DATES AND LOCATIONS (TENTATIVE)

September 20, 1991, **Saskatoon**. Consultations with the Saskatchewan Police Commission; the "F" Division of the RCMP; the Regina, Saskatoon and Prince Albert Police; and the Prairie Region Office of the RCMP Public Complaints Commissioner.

November 1, 1991, **Yorkton**. Public consultation on the committees' interim reports.

November 1, 1991, **Cumberland House**. Public consultation on the committees' interim reports.

November 6, 1991, **Saskatoon**. Consultation with Ombudsman's Office.

November 7, 1991, **North Battleford**. Consultation with members of the Provincial Court; public consultation on the committees' interim reports.

November 7, 1991, **Buffalo Narrows**. Public consultation on the committees' interim reports.

November 8, 1991, **Saskatoon**. Consultation with inmates and administration of the Saskatoon Mens Provincial Correctional Centre; consultation with the Ombudsman's office; public consultation on the committees' interim reports.

APPENDIX 7

LITERATURE CONSIDERED BY THE INDIAN JUSTICE REVIEW COMMITTEE

Advaserv Research and Training
"Native Harmony and Restoration Centre Proposal (Partial)." Prepared for the Interlake Reserves Tribal Council, Inc. Winnipeg, n.d.

Canadian Centre for Justice Statistics (CCJS)
Crime in Aboriginal Communities, Saskatchewan 1989. Prepared by Lee Wolff, Integration and Analysis Program, CCJS. Ottawa: Statistics Canada, April 1991.

Clark, Scott
Sentencing Patterns and Sentencing Options Relating to Aboriginal Offenders. Ottawa: Justice Canada, 1989.

Edmonton Inner City Violent Crime Task Force
"Discussion Paper and Recommendations." Edmonton, December 1990.

Government of Canada, Government of Saskatchewan, Federation of Saskatchewan Indian Nations
Reflecting Indian Concerns and Values in the Justice System. Ottawa, April 1985.

Gullickson, David
"Status Report on *Reflecting Indian Concerns*, Summary." Prepared for Policy, Planning and Evaluation, Saskatchewan Justice. Regina, June 1991.

Lajeunesse, Therese
Cross Cultural Issues in the Justice System: the Case in Canada, PCR Working Paper: 1991-1. Manoa: Program of Conflict Resolution, University of Hawaii, December 1990.

LaPrairie, Carol
"The role of sentencing in the over-representation of aboriginal people in correctional institutions," *Canadian Journal of Criminology*, 32:3 (July 1990): 429-40.

Northwest Territories Department of Justice
"Aboriginal Justice in the Northwest Territories, A Discussion Paper." Yellowknife, 1991.

Saskatchewan Alcohol and Drug Abuse Commission
Legal Offences in Saskatchewan: the Alcohol and Drug Connection. Regina: SADAC, February 1989.

Solicitor General Ministry Secretariat
Policing, Corrections and Security--Facts about Solicitor General Canada. Ottawa: Supply and Services Canada, 1988.

Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta (Justice R. A. Cawsey, Chair)
"A Review and Compilation of the Recommendations of Twenty-two Major Reports from 1967 to 1990 on Aboriginal People and the Justice System." In *Justice on Trial: Report of the Task Force on the Criminal Justice System and its Impact on the Indian and Metis People of Alberta, Volume III, Working Papers and Bibliography*, 4.1-4.78. Edmonton, March 1991.

APPENDIX 8

CORRESPONDENCE LIST

Shortly after the announcement of the IJRC and MJRC on June 5, 1991, the chairperson wrote to the following groups and individuals inviting written submissions on matters within the committees' terms of reference:

1. all Saskatchewan Provincial Court Judges
2. Dean Peter MacKinnon, College of Law, University of Saskatchewan, Saskatoon
3. Donald Purich, Native Law Centre, University of Saskatchewan, Saskatoon
4. Ellen Schmeiser, Continuing Legal Education, University of Saskatchewan, Saskatoon
5. C. Roger Carter, Saskatoon
6. Donald Morgan, Chairman, Saskatchewan Legal Aid Commission, Saskatoon
7. Joe Penkala, Chief of Police, Saskatoon City Police, Saskatoon
8. Ernie Reimer, Chief of Police, Regina Police Service, Regina
9. Greg McCullagh, Chief of Police, Prince Albert City Police, Prince Albert
10. Commanding Officer, Saskatoon Sub-division, RCM Police, Saskatoon
11. C.I.C. Macdonell, Commanding Officer, 'F' Division, RCM Police, Regina
12. Irene Fraser, Director, John Howard Community Justice Services, Saskatoon

13. Elizabeth Fry Society of Saskatchewan, Saskatoon

14. Chief Justice D.K. MacPherson, Saskatchewan Court of Queen's Bench, Regina

15. Chief Justice E.D. Bayda, Saskatchewan Court of Appeal, Regina

16. Donald Worme, President, Indigenous Bar Association of Canada, Saskatoon

17. Ron Mills, President, Canadian Bar Association, Prince Albert

18. Lyle Cundall, President, Saskatchewan Law Society

SUMMARY
STATUS REPORT ON REFLECTING INDIAN CONCERNS

Page	Recommendation	Status
	Customary Law	
17	1. - encourage Indian communities and educational institutions to develop mediation and conciliation processes and techniques; - techniques to be used to resolve contested elections under custom.	- GDI and SIFC have new Human Justice and Indian Social Work programs. - since March 1988, INAC has encouraged 29 Saskatchewan bands holding elections by custom to codify appeal procedures, 9 have done so.
18	2. - encourage changes recommended by the various working groups--Corrections, Law Enforcement and JP's.	- see appropriate specific recommendations below.
18	3. - encourage further research on customary law.	- no Justice Canada/ Saskatchewan Justice sponsored/funded activity has occurred in this province, but has been undertaken elsewhere (e.g., BC, Quebec and the Yukon).

Justices of the Peace

28	4.	- cross-appoint Native (Indian) JP's under section 107 of the Indian Act.	- cross-appointment did not proceed due to lack of resources for training and supervision, community pressures on JP's, low salaries, high turnover, and lack of authority and jurisdiction; 11 of 200 Presiding JP's are aboriginal.
28	5.	- appoint a person to design a new JP program according to mutually agreed upon guidelines.	- a new JP program was designed and 2 training modules--1 on judicial interim release, the other on search warrant issuance--were prepared. As well, a supervising JP was appointed by the Provincial Court to provide supervision and training (1989).
28	6.	- develop a new JP training program.	- see status of recommendation 5 above.
28.	7.	- increase support services provided to JP's.	- see status of recommendation 5 above.
28.	8.	- ascertain the costs of this program.	- no estimates have been calculated.

28	9.	- ensure adequate supervision of JP's appointed under section 107 of the Indian Act.	- no appointments made. Further, about 5% (11 of 200) of Presiding JP's are aboriginal.
28	10.	- include a built-in evaluation in Native JP program.	- no program; hence, no evaluation component. An evaluation of the J.P. program was done in 1988, and a new JP Act passed.
		Peacemakers	
33	11.	- encourage the use of peacemakers.	- no formal activity initiated by Saskatchewan Justice.
33	12.	- expand the role of peacemakers to include mediation responsibilities.	- no formal activity initiated.
33	13.	- provide services to supplement and and assist peacemakers.	- see status of recommendation 12 above.
34	14.	- encourage interested communities to design tailor-made peacemaker programs.	- see status of recommendation 12 above.
34	15.	- designate a resource person to assist communities as necessary.	- no action taken.
34	16.	- consider appointment of person to assist bands operating under custom to develop election appeal procedures.	- see status of recommendation 1 above.

Corrections

38	17.	- given the widespread perception that the criminal justice system is isolated and removed from everyday life on-reserve, community development should be the focus of attention.	- community corrections committees underway in 15 centres.
38	18.	- where feasible, return certain aspects of the criminal and juvenile justice systems (e.g., developing indigenous community institutions of service based on traditional values) to reserve communities.	- see status of recommendation 17.
39	19.	- place greater emphasis on on-reserve service delivery (e.g., police, probation and community services).	- 65 (of 325) fine option agents are located on-reserve; 3 reserve-based native policing units are in operation, and 3 more are planned for 91. NPUs currently operate at Little Pine/Poundmaker, Red Earth/Shoal Lake and Sandy Lake; and will open at Dillion, Thunderchild and Stanley Mission in the fall 1991. As well, new detachment buildings with be officially opened at Sandy Bay, Ile a la Crosse and Carrot River in late June 1991. Also, 'devolution' of INAC and H & W programs continues.

40	20.	- place greater emphasis on public education about Indian peoples as well as culturally-appropriate training for personnel who provide services on-reserve.	- the Indian Metis Education Branch of Saskatchewan Education has a number of major initiatives (e.g., the Indian and Metis Education Policy; teacher training programs; incentives to local school divisions, etc.). As well, Saskatchewan Justice, Corrections Canada and the RCMP have a variety of cross-cultural training programs in place. Finally, the PLEA Legal Lifeskills Workshop (Intermediary Training Program) is promoted by Sask Justice and Justice Canada. It is targetted towards women, aboriginal people and the disabled.
39	21.	- encourage and support 'networking' to optimize efficient service delivery.	- difficult to assess, see status of recommendations 24 and 25 below.
39	22.	- encourage more Indian involvement in existing justice system.	- see status of recommendations 24 and 25 below.
39	23.	- consider developing a generalist approach to consolidate on-reserve delivery of alternative programs.	- difficult to assess, see status of recommendations 24 and 25 below.

39	24.	- undertake research and associated community workshops to "demystify" or explain the criminal and youth justice systems to on-reserve populations.	- Saskatchewan Justice has not held formalized community workshops, nor has it prepared Indian-specific public legal education materials. However, other initiatives have been undertaken. For example, the RCMP is establishing aboriginal/community advisory committees at the detachment (20), sub-divisional (6) and divisional levels (1). As well, Corrections has contacted 15 communities about establishing community corrections committees. Further, Justice Canada has conducted research on sentencing alternatives (Clarke, 1989). Finally, PLEA delivers targeted Legal Lifeskills Workshops to aboriginal communities.
40	25.	- develop specific mechanisms (e.g., information packages, booklets, video materials, live theatre, etc.) to inform reserve communities about existing justice and social programs and their accessibility.	- see status of recommendation 24 above. As well, PLEA has developed a series of short information sheets on being a witness, etc. along with existing booklets on topics such as battered wives, seniors law and court structure. This literature is being widely distributed.

40	26.	- give special consideration to informing and sensitizing justice system employees working with reserves about Indian cultures.	- cross-cultural training is currently provided to police, prosecutors, judicial and corrections personnel. See also status of recommendation 20 above.
40	27.	- give workers, paid or voluntary, adequate training and orientation.	- extensive training, including university-based instruction, is provided to justice system workers by the Gabriel Dumont Institute and the School of Human Justice.
40	28.	- provide workers regular opportunities for upgrading training.	- in cooperation with Social Services, Saskatchewan Justice co-sponsored 11 courses with 210 participants in 1988/89. As well, 286 Justice staff participated in various PSC courses. Further, 12 weeks of formalized training is provided to Corrections workers prior to employment--60 workers graduated in 1988-89. Lastly, 7 staff were given Education Leave to complete their degree or certificate requirements.

40	29.	- support the development of multi-disciplinary drug and alcohol rehabilitation strategies.	- in addition to culturally sensitive, institution-based services in both the provincial and federal correctional spheres, services provided by SADAC and NNADAP (National Native Alcohol and Drug Abuse Program) have been expanded.
40	30.	- develop community-level prevention strategies which involve recreation, cultural, employment and preventative policing components.	- the Solicitor General has embraced community-based policing. As well, the RCMP has established community/aboriginal advisory committees. In addition, it provides a number of community-level crime prevention programs (e.g., Perfect School Attendance, school visits, coaching programs, drug/alcohol programs, bike rodeos, family violence awareness, etc.).
40	31.	- develop ways, such as Community Justice Committees, to increase community participation in the management of criminal behaviour.	- preliminary work on community-level aboriginal justice committees has been completed.

41	32.	- reaffirm the principle that the judicial sanction of incarceration should be used only as a last resort; and use fines only when satisfied that the offender has the means to pay.	- August 1990, release by Justice Canada of Directions for Reform-Sentencing References: establishes sentencing principles which incorporate these ideas. Consultations are on-going. Nonetheless, a substantial minority of Indian inmates (42% in 1988-89) are incarcerated for fine default.
41	33.	- make greater use of fine option, community service order, restitution and compensation programs.	- see status of recommendation 32 above.
41	34.	- examine existing research to find potential solutions to the 'over-representation problem;' and, in future, evaluate programs introduced to address it.	- the search for potential solutions continues. La Prairie (1991) has made a major contribution, as have Griffiths and Verdun-Jones (1989) as well as Cawsey et al. (1991).
41	35.	- give special consideration to research on ways to reduce the overrepresentation of Indian women, and develop programs to alleviate this problem.	- activity on this issue is ongoing, and includes the recently completed Task Force on Federally Sentenced Women; the GDI-operated CTR for women located at Saskatoon; and electronic monitoring/intensive probation for non-violent offenders.

42	36.	- make existing alternatives to incarceration more sensitive to Indian values and increase community involvement.	- see status of recommendations 20,24,30 and 31 above.
42	37.	- take account of transportation difficulties related to charges of failure to appear.	- At present, no special transportation programs are provided.
41	38.	- bring the court system closer to the reserves by: 1) increasing the number of Provincial Court sittings on-reserve; 2) having Indian JP's working and/or residing on-reserve; and by using local dispute resolution mechanisms.	- the Provincial Court currently holds court on, or in close proximity to, reserves at 10 northern locations. Whether or to what extent it would be feasible to hold court on-reserve elsewhere warrants further consideration. As regards presiding Indian JP's, there are few active across the province. See also status of recommendation 1 above.

42	39.	- give consideration to: 1) establishing local community justice committees at the community level; 2) appointing Indian Community Justice Workers at the local (community) level; and 3) appointing Justice Coordination Workers and Indian Crime Management Workers at the district or provincial level.	- as discussed at recommendation 31, preliminary work on local Aboriginal Justice Committees has been undertaken. However, no action has been undertaken in relation to elements 2) and 3).
		<u>Law Enforcement</u>	
61	40.	- (the FSIN, the RCMP and the Province) consider measures to ensure that Indian communities are better informed about law enforcement, policing and input communities can have into policing services.	- as discussed at recommendation 24, the RCMP has launched advisory committees at several levels and Sask. Justice has begun work on local Aboriginal Justice Committees. In addition, the FSIN is conducting a series of justice roundtables with tribal councils and/or specific bands across the province.
61	41.	- sponsor workshops at the local or district level and produce booklets, pamphlets and av materials for distribution.	- see discussion at recommendations 24, 25, 39 and 40.

61	42.	- subject to community input, nominate an Indian person to the Saskatchewan Police Commission.	- save for a vacancy in 1983-84, an Indian person has sat on the Police Commission since 1982 (Greg Brass--1982-83; Rita Thompson--1985-88; Ron Gamble--1988-90; Stella Isnana--1990-).
61	43.	- (the RCMP) consider special selection criteria for reserve postings, and make cross-cultural training mandatory upon such postings.	- the RCMP has recently introduced changes to improve the aboriginal component of its cross-cultural training. Further, it is working on 'pre-screening' for racial intolerance. However, neither is mandatory for reserve postings as such.
61	44.	- (the Province, in conjunction with INAC) consider increasing the number of Indian Special Constables.	- the number of Indian Special Constables was frozen at 39 (plus 9 for non-status/Metis communities) in 1986. The Indian Special Constable Program was subsequently phased-out in 1990 and replaced by the Aboriginal Constable Development program. Under the latter, applicants are able to upgrade their qualifications to regular status. As well, aboriginal human justice and pre-hiring programs were initiated in conjunction with GDI and CEIC in 1989.

62	45.	- (the Province and the RCMP) consider developing problem-specific crime prevention programs and expand the use of Native Policing Units (sub-detachments staffed by Indian Special Constables).	- see status of recommendations 19 and 30 above.
62	46.	- (members of local RCMP detachments) consider increased participation in cross-cultural workshops and establishing an informal working relationship with the leadership of local bands.	- further to the measures set out at status of recommendation 43, detachments serving reserve communities meet regularly with band Chiefs to provide them with reports on crime trends on-reserve. As well, they periodically seek band input on enforcement priorities.
62	47.	- (members of local detachments and Indian communities) establish a mechanism which new constables are introduced, transfers are explained, and changes within the reserve are outlined.	- see status of recommendation 46 above.
		<u>The Indian Special Constable Program</u>	
63	48.	- (the RCMP) expand in-service training opportunities available to Indian Special Constables.	- see status of recommendation 44 above.

63	49.	- provide Indian Special Constables greater opportunities to participate in detachment administrative duties.	- see status of recommendation 44 above.
63	50.	- permit Special Constables to wear the reg serge.	- as noted at recommendation 48, the 3(b) program is being phased out and all existing Special Constables are being converted to regular member status. Further, pursuant to the Aboriginal Constable Development and GDI 'pre-hiring' programs, special recruitment and training measures have been put in place. Hence, the concerns identified in recommendations 50 through 54 have, in the main, been addressed.
63	51.	- (the RCMP) consider ways to permit Special Constables to achieve separate rank designations and undertake super-visory responsibilities.	- see status of recommendation 50.
63	52.	- (the RCMP) consider wage parity as between Special Constables and regular members.	- see status of recommendation 50.
63	53.	- (the RCMP) consider removing eyesight standards in order to ease conversion of Special Constables to regular member status.	- see status of recommendation 50.

64	54.	- (the RCMP) consider recruiting and training Indians as regular constables within the 3(b) program.	- see status of recommendation 50.
64	55.	- (the RCMP) examine if Indian Special Constables are being used for the purpose intended in circumstances where their reported time on-reserve appears disproportionately low.	- whether or to what extent Indian Specials/ Indian members have increased their activity on-reserve is difficult to discern. However, insofar as 3 Native Policing Units are now operational (and 3 more are to open soon), it seems likely that, at least in these instances, activity on-reserve has increased.
		Developing Options: Legal Advisory Services	
65	56.	- consider making legal advisory services available to assist in the further development of these recommendations.	- as the FSIN prepared no response to the studies, no legal advisory services were provided.

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